IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JANET WOOLER,	**:**	
Plaintiff,	**:**	**CIVIL ACTION**
v.	**:**	
	:	
CITIZENS BANK,	**:**	**No. 06-1439**
Defendant.	**:**	

MEMORANDUM AND ORDER

Schiller, J. **November 30, 2006**

Plaintiff Janet Wooler brings this action against Defendant Citizens Bank alleging gender discrimination, age discrimination, retaliation, and violations of Pennsylvania's Human Relations Act. Presently before the Court is Defendant's motion for summary judgment. For the following reasons, Defendant's motion is granted.

I. BACKGROUND

In November 2001, Plaintiff was hired as an Assistant Branch Manager at Defendant's Doylestown, Pennsylvania branch. In May 2002, Plaintiff received a Performance Improvement Plan ("PIP") based on her failure to achieve certain performance goals. (Def.'s App. of Exs. to Def.'s Mot. for Summ. J. [hereinafter Def.'s App.] Ex. D [hereinafter 2002 PIP]). Roughly one year and a half later, Plaintiff received a second PIP which, among other things, noted that she needed to be more involved in managing the sales process at the branch. (*Id.* Ex. E [hereinafter 2003 PIP]).

In July 2004, Citizens hired Ramin Bahar as Doylestown's Branch Manager. (*Id.* Ex. I [hereinafter Frese Dep.] at 18.)[1] Bahar became Plaintiff's immediate supervisor. From the outset, Plaintiff felt that Bahar created a hostile work environment and specifically targeted her for

[1] Matthew Frese is an employee in Citizens' Human Resources Department. (Frese Dep.)

mistreatment. (*Id.* Ex. A [hereinafter Wooler Dep.] at 117.) For example, Bahar told the employees at the Doylestown Branch that he had fired an employee at his previous job despite that employee's twenty years of service. (*Id.* at 117, 125-28.) Bahar also made two off-color jokes about Plaintiff's age: (1) pointing out in front of the staff at another employee's fortieth birthday party that he and Plaintiff were too old to remember their fortieth birthdays; and (2) asking Plaintiff whether she had Alzheimer's disease when she could not find a form on a customer account. (*Id.* at 117, 137-38.)

Because of these and other concerns, Plaintiff contacted the Human Resources Department at Citizens. On August 23, 2004, Plaintiff sent a letter describing the above events as well as a lengthy list of grievances regarding general managerial issues. (Frese Dep. at 19-20; Def.'s App. Ex. H (Wooler Letter).) In response to Plaintiff's letter, the Human Resources Department conducted an investigation and, on September 24, 2004, placed Bahar on a thirty-day action plan to improve his managerial style. (Frese Dep. at 23; Def.'s App. Ex. K (Bahar Development Plan).) Bahar left Citizens a few days after he was placed on the thirty-day action plan. (Frese Dep. at 39.) Plaintiff then took over day-to-day management responsibilities at the Doylestown Branch while Citizens searched for a new manager. (Wooler Dep. at 40-42; Frese Dep. at 41.) Ben Oltman, the Branch Manager at Citizens' Warrington Branch, assisted Plaintiff during that time period. (Frese Dep. at 36-37.)

Frances Craig was promoted to Regional Manager contemporaneously with Bahar's departure. (Def.'s App. Ex. L [hereinafter Craig Aff.] ¶ 2.) Shortly after the promotion, Craig conducted a supervisory visit to the Doylestown Branch. (*Id.* ¶ 5.) Dissatisfied with what she

identified as a lack of operational compliance, Craig ordered an audit of the branch.[2] (*Id.* ¶¶ 6-8.) The October audit returned a score of 48 out of 100, resulting in a finding that the branch was operating "Significantly Below Standards." (Def.'s App. Ex. M [hereinafter October 2004 audit].) In response to the poor audit score, three non-management employees were issued written warnings, another employee was fired, and Plaintiff was placed on a thirty-day final action plan. (Frese Dep. at 35; Def.'s App. Exs. O (Corrective Communication Notices), P (Wooler Final Action Plan).) At the end of the thirty day period, the branch's performance actually worsened, and it received a score of 27 out of 100 on an operational scorecard. (Craig Aff. ¶ 14.) Despite the poor performance, Craig gave Plaintiff an additional thirty days to improve the branch's scores. (*Id.*; Def.'s App. Ex. S (Extension of Action Plan).) Although a December audit showed improvement, Plaintiff still failed to meet certain goals listed in her action plan. (Craig Aff. ¶ 16.) On January 4, 2005, Plaintiff was fired. (*Id.*) Six days later, Citizens hired Joy Styles, a fifty-six year-old woman, as Branch Manger. (*Id.*) In April 2005, Citizens transferred Kevin Danielson, a twenty-nine year-old man, into the Assistant Manager position. (*Id.*)

II. STANDARD OF REVIEW

Summary judgment is appropriate when the admissible evidence fails to demonstrate a dispute of material fact and the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). When the moving party does not bear the burden of persuasion at trial, the moving party may meet its burden on summary

[2] Citizens' branches are audited quarterly, but the exact time of the audit within a quarter is intentionally concealed from each branch. The October 2004 audit ordered by Craig appears to have constituted the fourth quarter audit for the Doylestown Branch. (Frese Dep. at 30.)

judgment by showing that the nonmoving party's evidence is insufficient to carry its burden of persuasion at trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 (1986). Thereafter, the nonmoving party demonstrates a genuine issue of material fact if sufficient evidence is provided to allow a reasonable jury to find for him at trial. *Anderson*, 477 U.S. at 258-59. In reviewing the record, "a court must view the facts in the light most favorable to the nonmoving party and draw all inferences in that party's favor." *Armbruster v. Unisys Corp*., 32 F.3d 768, 777 (3d Cir. 1994). Furthermore, a court may not make credibility determinations or weigh the evidence in making its determination. *See Reeves v. Sanderson Plumbing Prods*., 530 U.S. 133, 150 (2000); *see also Goodman v. Pa. Tpk. Comm'n*, 293 F.3d 655, 665 (3d Cir. 2002).

III. DISCUSSION

A. Plaintiff's Age Discrimination Claim

Plaintiff alleges that Defendant terminated her employment in violation of the Age Discrimination in Employment Act ("ADEA"). To state a claim for age discrimination under the ADEA a plaintiff must allege that: (1) she is over 40 years old; (2) she is qualified for the position; (3) she suffered from an adverse employment decision; and (4) her replacement was sufficiently younger to permit a reasonable inference of age discrimination. *Hill v. Borough of Kutztown*, 455 F.3d 225, 247 (3d Cir. 2006); *see also* 29 U.S.C. § 621 *et seq.* (2006).

Once the prima facie case is established, the burden of production shifts to the defendant, who must offer evidence sufficient to support a determination that it carried out the adverse employment action for a legitimate, non-discriminatory reason. *Kautz v. Met-Pro Corp.*, 412 F.3d 463, 465 (3d Cir. 2005). If a defendant meets its burden, "a plaintiff may then survive summary

judgment by submitting evidence from which a factfinder could reasonably either (1) disbelieve the employer's articulated legitimate reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's action." *Id.* at 465 (citations omitted).

The Court finds that Plaintiff has demonstrated a prima facie case of age discrimination because: (1) she was a member of a protected class; (2) she was qualified for the position;[3] (3) she suffered an adverse employment action; and (4) the decision was made under circumstances that permit an inference of age discrimination. *See Duffy v. Paper Magic Group, Inc.*, 265 F.3d 163, 167 (3d Cir. 2001); *Pivirotto v. Innovative Sys., Inc.*, 191 F.3d 344, 352-57 (3d Cir. 1999).

Merely establishing a prima facie case is insufficient to allow a plaintiff to overcome a motion for summary judgment where the defendant offers a legitimate, non-discriminatory reason for its action. *See Fuentes v. Perskie*, 32 F.3d 759, 763 (3d Cir. 1994). Here, Citizens' legitimate, non-discriminatory reason for terminating Plaintiff is poor performance. Defendant has presented evidence beginning as early as 2002 that Plaintiff's job performance was sub-par. *See* (2002 PIP; 2003 PIP.) Moreover, while Plaintiff was acting as the *de facto* manager of the Doylestown Branch, it received two consecutive audit scores that were significantly below minimum company standards.

[3] Defendant argues that Plaintiff cannot establish a prima facie case because the scores on the audit reports show that she was not qualified for the Assistant Manager position. Defendant's argument that Plaintiff was unqualified is best construed as a legitimate, non-discriminatory reason for its employment decision rather than as a barrier to Plaintiff's prima facie case. *See Kennedy v. Chubb Group of Ins. Cos.*, 60 F. Supp. 2d 384 (D.N.J. 1999); *Gonzalez v. Passaic County Probation*, Civ. A. No. 04-3001, 2005 WL 2077294, at *4 n.5 (D.N.J. Aug. 25, 2005) ("[T]he 'qualified' prong of the prima facie case is more of a screening mechanism i.e., to weed out clear cut cases such as jobs requiring certain levels of educational degrees, licenses, etc., and any on the job performance evaluations are more appropriately considered in the pretext phase of the case.")

(October 2004 audit; Craig Aff. ¶¶ 10, 14.) Accordingly, Defendant has satisfied its burden of production by articulating a legitimate, non-discriminatory rationale for the adverse employment action.

To survive summary judgment once a defendant has met its burden, a plaintiff must either present direct evidence of discrimination or proceed along the pretext framework outlined in *McDonnell Douglas*, 411 U.S. at 792. Direct evidence is evidence that demonstrates that "decision makers placed substantial negative reliance on an illegitimate criterion in reaching their decision." *Anderson v. Consol. Rail Corp.*, 297 F.3d 242, 248 (3d Cir. 2002) (citation omitted). Such evidence "'leads not only to a ready logical inference of bias, but also to a rational presumption that the person expressing bias acted on it' when he made the challenged employment decision." *Fakete v. Aetna, Inc.*, 308 F.3d 335, 338-39 (3d Cir. 2002) (*quoting Starceski v. Westinghouse Elec. Corp.*, 54 F.3d 1089, 1097 (3d Cir. 1995)). If a plaintiff puts forth direct evidence of discrimination, the causation burden shifts to the defendant to prove that it would have taken the same employment action even if it had it not considered an impermissible factor.[4] *Id.* at 338.

1. Plaintiff Lacks Direct Evidence of Discrimination

Although the Court construes the evidence in the light most favorable to Plaintiff, she lacks direct evidence that Defendant discriminated against her on the basis of her age. Bahar was not a decisionmaker at the time Plaintiff was fired; he left Citizens four months before her termination. Accordingly, Bahar's remarks, even assuming they reveal age bias, fail to establish direct evidence

[4] The term "direct evidence" is somewhat of a misnomer because even circumstantial evidence can shift the burden of proof to the defendant if it directly reflects the alleged unlawful bias. *Fakete*, 308 F.3d at 339. Direct evidence cases have also been called "mixed-motive" cases. *Id.* at 337 n.2.

of discrimination. *Fakete*, 308 F.3d at 338. Bahar's statements do not show that Citizens' decisionmakers placed substantial reliance on an illegitimate criterion in reaching an employment decision. *See Anderson*, 297 F.3d at 248. Moreover, Bahar's statements are insufficient to amount to direct evidence of discrimination because they do not lead to a "ready logical inference of bias." *Fakete*, 308 F.3d at 338-39. While the statements are arguably related to age in an attenuated fashion, they do not sufficiently reveal any type of prohibited animus or connect any such animus to an employment decision. For example, Bahar's comment about firing an employee at his previous job who had accumulated twenty years of service is susceptible to myriad interpretations. A likely interpretation is that Bahar was stressing that employees may not rest on their laurels. Indeed, Plaintiff admitted that when she first heard the story she did not consider it to be age related. (Wooler Dep. at 128.)

Turning to the two off-color remarks Bahar made about Plaintiff, the first occurred during a co-worker's fortieth birthday party. (*Id.* at 137-38.) Bahar stated that the person turning forty years old was "going over the hill" and that neither he nor Plaintiff could remember their fortieth birthdays. (*Id.*) Someone then questioned what he meant because Plaintiff was only forty-one years-old.[5] (*Id.*) Bahar responded that if Plaintiff was forty-one years-old, then he was twenty-nine years-old. (*Id.*) Second, Bahar asked Plaintiff whether she suffered from Alzheimer's disease when she could not find a form he wanted. (*Id.* at 164-65.) Neither statement constitutes direct evidence of discrimination. In addition to failing to support a "ready logical inference of bias," the statements also fail to connect any such bias to an employment action. *See Fakete*, 308 F.3d at 338-39.

[5] Plaintiff was actually fifty-two years-old at the time of the birthday party, and it is unclear why Plaintiff's co-worker was mistaken about Plaintiff's age.

2. Plaintiff Cannot Survive Summary Judgment on a Pretext Theory

To show that Defendant's articulated reason is merely a pretext for age discrimination, Plaintiff must "present evidence contradicting the core facts put forward by the employer as the legitimate reason for its decision." *Kautz*, 412 F.3d at 467. In other words, Plaintiff "must demonstrate such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder *could* rationally find them unworthy of credence." *Fuentes*, 32 F.3d at 765 (citations omitted).

Plaintiff has set forth no evidence that Citizens' legitimate, non-discriminatory reason for firing her is unworthy of credence. Bahar, the only person who made statements potentially evincing discriminatory animus, left Citizens significantly before Plaintiff's termination. The results of the two audits after Bahar left, while Plaintiff was *de facto* manager of the branch, revealed scores far below Citizens' standards. (October 2004 audit; Craig Aff. ¶¶ 10, 14.)

Plaintiff points out that Ben Oltman was the acting Manager of the Doylestown Branch at the time of the audit. (Pl.'s Mem. in Opp'n to Def.'s Mot. for Summ. J. [hereinafter Pl.'s Mem.] at 17.) While that is technically true, Plaintiff admits that she was responsible for the day-to-day operations at the branch in the absence of a full-time manager. (Wooler Dep. at 89.) Oltman, who was the Branch Manager at Citizens' Warrington Branch, was made nominal acting Manager at Doylestown primarily for the purpose of authorizing checks of an amount greater than Plaintiff could authorize. (Frese Dep. at 36-37.) Taken in the light most favorable to Plaintiff, the evidence shows that it was Plaintiff, not Oltman, who was functionally responsible the Doylestown Branch after Bahar's departure.

In response to the first audit, Citizens disciplined five branch employees; one employee was

terminated immediately. (Craig. Aff. ¶ 13; Frese Dep. at 47-52; Def.'s App. Ex. O (Corrective Communications Notices).) Plaintiff was given thirty days to improve the branch's performance, but a subsequent operational scorecard revealed still poorer results. (Craig Aff. ¶ 12, 14; Def.'s App. Ex. P (October 2004 Final Action Plan).) Plaintiff was then given an *additional* thirty-days to attempt to improve performance. (Def.'s App. Ex. S (December 2004 Extension of Action Plan).) Although a final audit showed modest improvement, Plaintiff had still failed to meet certain sales goals. (Craig Aff. ¶ 16.) Plaintiff's belief that Citizens should have given her the benefit of the doubt after the final action plan or allowed her additional time to meet sales goals is simply insufficient to enable a jury rationally to conclude that Citizens' legitimate, non-discriminatory reason was a pretext for age discrimination. In sum, Plaintiff has utterly failed to adduce evidence sufficient to enable a jury reasonably either to disbelieve Citizens' articulated legitimate reason for terminating Plaintiff or to believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of Citizens' action. *See Fuentes*, 32 F.3d at 764.

Therefore, having failed to establish a genuine issue of material fact with respect to her age discrimination claim, Defendant is entitled to summary judgment.

B. Plaintiff's Gender Discrimination Claim

Plaintiff alleges disparate treatment based on her gender in violation of Title VII of the Civil Rights Act of 1964. To state a prima facie case for gender discrimination, the plaintiff must: (1) be a member of a protected class; (2) be qualified for the position; and (3) suffer an adverse employment decision "under circumstances that give rise to an inference of unlawful discrimination." *Tx. Dep't of Comm. Affairs v. Burdine*, 450 U.S. 248, 253 (1981); *see also* 42 U.S.C. § 2000e-2(a) (2006). "Common circumstances giving rise to an inference of unlawful

discrimination include the hiring of someone not in the protected class as a replacement or the more favorable treatment of similarly situated colleagues outside of the relevant class." *Morris v. G.E. Fin. Assurance Holdings*, Civ. A. No. 00-3849, 2001 WL 1558039 at *5 (E.D. Pa. Dec. 3, 2001). However, the elements of a prima facie case for gender discrimination vary depending on the facts and context of each situation. *See Pivirotto*, 191 F.3d at 352. Here, Plaintiff seeks to establish her prima facie case by: (1) highlighting similarly situated employees outside the relevant class who allegedly were treated more favorably; and (2) noting that Plaintiff was eventually replaced by a male employee.

1. Plaintiff Fails to Establish a Prima Facie Case

Plaintiff fails to establish her prima facie case because the non-female employees she relies upon are not similarly situated. The two most important factors in assessing whether an employee is similarly situated to a plaintiff alleging gender discrimination are the nature of the offenses perpetrated by the employees and the punishments imposed. *Lathem v. Dep't of Children and Youth Servs.*, 172 F.3d 786, 793 (11th Cir. 1999). Here, the purportedly similarly situated employees (also known as "comparators") either did not have similar job responsibilities or did not commit similar offenses. Plaintiff points to Oltman and Bahar as examples of male employees who were treated less harshly for substantially similar conduct, but there is no evidence that either man was a manager, or assistant manager operating as acting manager, of a branch with sub-standard audit scores. Bahar was no longer employed at Citizens when the results of the October 2004 audit were returned, thus Citizens could not have subjected him to any type of discipline.

As for Oltman, he was the Manager at Citizens' Warrington Branch and fulfilled certain responsibilities beyond Plaintiff's authority at the Doylestown Branch while Citizens was looking

for a replacement for Bahar. (Frese Dep. at 36-37.) As Plaintiff admits, however, Oltman was rarely at the Doylestown Branch and there is no evidence that he held any day-to-day managerial responsibilities for that branch. (Wooler Dep. at 235.) His primary duty vis-a-vis the Doylestown Branch was merely to sign checks for amounts greater than Plaintiff was authorized to sign as an Assistant Manager. (Frese Dep. at 36-37.) Moreover, Plaintiff does not set forth any evidence that Oltman's Warrington Branch – the branch for which he was primarily responsible – had ever received audit scores nearly as poor as those received by the Doylestown Branch while Plaintiff was functionally responsible. Finally, while it is true that Plaintiff was only functionally in charge of the Doylestown Branch for approximately one week before the first audit, (Wooler Dep. at 226), the scores were even worse in a follow-up operational scorecard issued a month later, (Craig Aff. at 3).

Nor does the fact that Plaintiff's position was eventually filled by a man enable her to establish a prima facie case. At the time she was fired, Plaintiff was the sole employee in the Doylestown Branch with managerial authority. After Citizens terminated Plaintiff, it hired a *female* Branch Manager who became the sole managerial employee. Thus, although her Assistant Manager position was ultimately filled several months later by a male, that fact alone cannot establish the prima facie case. *See Atkinson v. Lafayette Coll.*, Civ. A. No. 01-2141, 2003 WL 21956416, at *8 (E.D. Pa. July 24, 2003) (fact that female plaintiff replaced by male not enough to establish prima facie case where comparators not similarly situated and no male employees treated more favorably).

Accordingly, absent evidence that similarly situated males were treated differently, and without other evidence sufficient to give rise to an inference of discrimination, Plaintiff fails to establish a prima facie case under Title VII.

2. Plaintiff Cannot Establish Pretext

Even assuming that Plaintiff could establish a prima facie case of gender discrimination, summary judgment is still appropriate because, as described above with respect to Plaintiff's age discrimination claim, Plaintiff has failed to provide any evidence from which a jury reasonably could disbelieve Defendant's legitimate, non-discriminatory reason for terminating her employment or find that an invidious motive was more likely than not a motivating or determinative cause of her termination. Bahar is the only person who Plaintiff alleges exhibited gender bias, but he was not a decisionmaker at the time Plaintiff was fired, and Plaintiff's deposition states only that Bahar was demanding and demeaning. *See, e.g., Mattel v. Turner Constr. Co.*, Civ. A. No. 03-5472, 2005 WL 1683646, at *4 (D.N.J. July 19, 2005). Additionally, the evidence reveals that Plaintiff had a spotty work history dating back as far as May 2002, and the branch for which she was primarily responsible was dramatically underperforming. Plaintiff has produced no countervailing evidence establishing any implausibilities, inconsistencies, or incoherencies that belie Defendant's articulated rationale and indicate an invidious motive to terminate Plaintiff because of her gender.

Therefore, because Plaintiff has not provided evidence from which a reasonable jury could conclude that Defendant's articulated non-discriminatory reason for her termination is a pretext, Defendant is entitled to summary judgment on Plaintiff's Title VII gender discrimination claim.

C. Plaintiff's Retaliation Claim

Both the ADEA and Title VII prohibit retaliation.[6] A plaintiff has a cause of action for

[6] The ADEA states, in part: "It shall be unlawful for an employer to discriminate against any of his employees . . . because such individual, member or applicant for membership has opposed any practice made unlawful by this section . . . ." 29 U.S.C. § 623(d).

Likewise, Title VII's anti-retaliation provision provides: "It shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because he

retaliation if she: (1) engaged in protected activity; (2) was subsequently or contemporaneously subject to an adverse employment action; and (3) there was a causal link between the protected activity and the adverse action. *Woodson v. Scott Paper Co.*, 109 F.3d 913, 920 (3d Cir. 1997). Protected activity includes complaints to management made by employees alleging discrimination on the basis of a criterion such as age or gender. *Curay-Cramer v. Ursuline Acad. of Wilmington*, 450 F.3d 130, 135 (3d Cir. 2006). There are no strict requirements for an employee's actions to be considered protected activity, however, at the very least the activity must identify the allegedly improper practice, if not specifically, at least by context. *Id.* Although Plaintiff's letter to Human Resources standing alone arguably would not have constituted protected activity, Plaintiff had previously contacted Matthew Frese in the Human Resources Department and told him that she felt that Bahar was treating her unfairly due to her age, sex, and length of service. (Frese at 19.) Accordingly, the combination of the verbal exchange and the letter constitutes protected activity. *See Curay-Cramer*, 450 F.3d at 130.

1. Plaintiff Cannot Establish a Causal Link Between Her Termination and the Protected Conduct[7]

In assessing whether there is a causal connection between the protected activity and the

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has opposed any practice made an unlawful employment practice by this subchapter . . . ." 42 U.S.C. § 2000e-3(a).

[7] Although Plaintiff does not argue to the contrary, the Court notes that the October 2004 audit of the Doylestown Branch was not itself an adverse employment action. Even under the more liberal standard enunciated in *Burlington Northern and Santa Fe Railroad. Co. v. White*, 126 S. Ct. 2405, 2411-15 (2006), the audit fails to qualify as an adverse employment action because the prospect of an audit, which regularly occurred each quarter, would not have "dissuaded a reasonable worker from making or supporting a charge of discrimination." *Id.* at 2415 (citations omitted). Moreover, Plaintiff does not assert that the audit score was inaccurate. (Wooler Dep. at 215.)

adverse employment action, courts consider a number of factors, including the temporal proximity between the protected conduct and the employment action. *See Farrell v. Planters Lifesavers Co.*, 206 F.3d 271, 280 (3d Cir. 2000). The Third Circuit has held that temporal proximity, standing alone, is insufficient to allow a retaliation claim to survive a motion for summary judgment if the proximity is not "unusually suggestive." *Krouse v. Am. Sterilizer Co.*, 126 F.3d 494, 503 (3d Cir. 1997). While there is no definitive period of time after which the temporal connection is no longer unusually suggestive, the Court concludes here that the approximately four month gap between Plaintiff's letter and her termination is not unusually suggestive. *See, e.g., Williams v. Phila. Housing Auth. Police Dept.*, 380 F.3d 751, 760 (3d Cir. 2004) (two months not unduly suggestive); *Woods v. Bentsen*, 889 F. Supp. 179, 187 (E.D. Pa. 1995).

However, even in the absence of close temporal proximity between the protected conduct and the adverse employment action, a plaintiff can still meet her burden by relying on circumstantial evidence sufficient to establish the causal link. *Farrell*, 206 F.3d at 280-81. Such evidence includes ongoing antagonism, inconsistent statements by the employer regarding its employment decision, and any other evidence from the record as a whole that is sufficient to establish a causal link. *Id.* at 281. In the instant case, Plaintiff lacks any additional evidence to establish the requisite causal connection. *See Cardenas v. Massey*, 269 F.3d 251, 264 (3d Cir. 2001). Not only is there an absence of ongoing antagonism, but Citizens even provided Plaintiff with an additional thirty days to improve her performance after the second audit of the Doylestown Branch showed worse results than the first. Moreover, Citizens' explanations for its actions are not inconsistent, nor is there any other evidence in the record to support a causal connection between the protected conduct and the adverse employment action.

2. Plaintiff Fails to Provide Evidence Sufficient to Conclude that Citizens' Proffered Legitimate, Non-Discriminatory Reason for Terminating Her is a Pretext

Where, as here, a defendant offers a legitimate, non-discriminatory reason for its employment action, a plaintiff who has established a prima facie case can survive summary judgment only if sufficient evidence exists such that a reasonable jury could disbelieve the defendant's articulated reason or conclude that retaliatory animus was more likely than not a motivating or determinative cause of the employment decision. *See Krouse*, 126 F.3d at 500. Assuming that Plaintiff engaged in protected conduct and that the evidence is sufficient to support a causal connection between such conduct and her termination, granting summary judgement is still appropriate because the evidence is insufficient for a reasonable factfinder either to disbelieve the employer's articulated legitimate reason or to believe that the desire to retaliate was more likely than not a motivating or determinative factor in Citizens' employment decision. There is nothing incoherent, inconsistent, or implausible about Citizens' decision to fire a managerial level employee whose branch received two consecutive sub-standard audit scores. Four other employees at the Doylestown Branch were disciplined following the October 2004 audit, and there is no evidence that managerial employees from other branches were treated less harshly following sub-par audit scores. Accordingly, summary judgment in favor of Defendant is warranted on Plaintiff's retaliation claim.

D. Plaintiff's Disparate Impact Claim

In the second count of the Complaint, Plaintiff sets forth an age-based disparate impact claim. (Compl. ¶¶ 26-31). The ADEA authorizes disparate impact actions; such claims arise in situations where an employer's facially neutral program disproportionately affects members of a protected class. *See Smith v. City of Jackson*, 544 U.S. 228, 234-241 (2005). Here, Plaintiff has failed to

provide evidence of any specific test, requirement, or practice that had an adverse impact on older workers. *See id.* at 241. Nor has Plaintiff pointed to any similarly situated older employees who were subject to unfavorable treatment on the basis of any such test, requirement, or practice. *See Ballo v. Adecco*, Civ. A. No. 05-5734, 2006 WL 1876569, at *6 (E.D. Pa. July 5, 2006). Therefore, summary judgment in favor of Defendant on Plaintiff's disparate impact claim is proper.

E. Plaintiff's PHRA Claim

For the reasons discussed above in connection with Plaintiff's claims of discrimination under the ADEA and Title VII, Plaintiff cannot sustain an action under the Pennsylvania Human Relations Act. *See Kelly v. Drexel Univ.*, 94 F.3d 102, 105 (3d Cir. 1996); 43 PA. CONS. STAT. ANN. § 955 (2006). Accordingly, the Court grants Defendant's motion for summary judgment on Plaintiff's PHRA claim as well.

IV. CONCLUSION

For the foregoing reasons, the Court grants Defendant's motion for summary judgment. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JANET WOOLER,	**:**	
Plaintiff,	**:**	**CIVIL ACTION**
v.	**:**	
	:	
CITIZENS BANK,	**:**	**No. 06-1439**
Defendant.	**:**	

ORDER

AND NOW, this **30th** day of **November**, **2006**, upon consideration of Defendant's motion for Summary Judgment, the response thereto, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendant's Motion for Summary Judgment (Document No. 13) is **GRANTED**.
2. Defendant's Motion for Leave to File a Reply Memorandum (Document No. 16) is **DENIED as moot**.
3. The Clerk of Court shall mark this case closed for statistical purposes.

BY THE COURT:

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Berle M. Schiller, J.